IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WA.No. 1059 of 2006()

AGAINST THE JUDGEMENT IN WPC.34608/2005 Dated 07/02/2006

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APPELLANTS/ RESPONDENTS:

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1. THE REGIONAL TRANSPORT OFFICER/
   TAXATION OFFICER, KOLLAM.

2. THE DEPUTY TRANSPORT COMMISSIONER,
   SOUTH ZONE, THIRUVANANTHAPURAM.

3. THE TRANSPORT COMMISSIONER,
   THIRUVANANTHAPURAM.

4. THE STATE OF KERALA, REP. BY ITS
   CHIEF SECRETARY, GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

RESPONDENT/ PETITIONER :

K.S.BRAHMADAS,
PANCHAVADY, DALAVAPURAM,
NEENDAKARA, KOLLAM.

BY ADV. SRI.C.C.THOMAS
SRI.G.PRABHAKARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1059 OF 2006

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Dated this the 14th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Challenging the correctness or otherwise of the judgment of the learned single Judge in W.P.(C) No. 34608 of 2005 dated 7th February, 2006, the Revenue is before us in this Appeal. By the impugned judgment, the learned single Judge has directed the first respondent/first appellant herein to refund the tax paid by the petitioner/respondent herein for the quarter ending on 31.03.2002.

2. Shri V.V. Asokan, learned Special Government Pleader for Taxes would submit that for claiming refund or exemption from payment of tax, the registered owner of the vehicle ought to have filed Form G prescribed under the Kerala Motor Vehicles Taxation Act ('Act' for short) and since that has not been done, the learned single Judge ought not to have directed the authorities to refund the tax paid.

3. The admitted facts are:

The respondent herein was the registered owner of the vehicle bearing registration NO. KRU-1810. The said vehicle was

covered by a regular permit on the route Andamukku-Kottarakkara . He had paid tax for the quarter ending on 31.03.2002 only on 13.03.2002. Since, according to him, he had not operated the vehicle during the quarter ending on 31.03.2002, he had filed an application before the authorities, claiming refund of tax paid by him under the provisions of the Kerala Motor Vehicles Taxation Act. The said application was rejected by the authorities by passing Ext.P4 order dated 13.09.2004 . That order had been questioned by the registered owner before this court in W.P.(C) 32302 of 2004. As we have already stated that the learned single Judge has allowed the Writ Petition and has directed the authorities to refund the tax paid by the registered owner for the quarter ending on 31.03.2002. The correctness or otherwise of the said order is the subject matter of this Writ Appeal.

4. For the purpose of answering the issues raised in this Writ Appeal, certain provisions of the Act requires to be noted. Section 2 of the Act speaks of 'registered owner', 'tax' etc . Section 2(e) of the Act speaks of the registered owner, which only means, the person in whose name a motor vehicle is registered or deemed to be registered under the Motor Vehicles Act. Section 2(h) defines 'tax' to mean tax

leviable under the Act. Section 3 of the Act is charging provision . Under the said section, tax is leviable on every motor vehicle used or kept for use in the State at the rates specified for such vehicle in the Schedule. Section 4 of the Act speaks of payment of tax and issue of licence. The said section is not relevant for the purpose of the issue raised in this Writ Appeal. Then we go to section 5 of the Act, which speaks of exemption from tax. The said section requires to be noticed and therefore, it is extracted:

> *"5. Exemption from tax: (1) In the case of a motor vehicle which is not intended to be used or kept for use during the first month or the first and second months of a quarter, or the whole of a quarter or year, as the case may be, the registered owner or the person having possession or control of such vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained, that such vehicle would not be used for such period and thereupon, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicle for such period.*
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> *(2) Nothing in sub-section (1) shall exempt a person from liability to pay tax in respect of a motor vehicle, if, on*

verification, it is found that the motor vehicle has been used during such period or any portion thereof.

(3) Notwithstanding anything contained in sub-section (1), in an appeal under section 23 or a revision under section 24, the burden of proving that a motor vehicle has not been used during any period shall be on the registered owner or the person having possession or control of the motor vehicle, as the case may be."

5. Under the aforesaid section, if the registered owner of the vehicle is of the opinion that he has no intention to use or kept for use the vehicle during the first month or the first and second months of a quarter, or the whole of a quarter or year, as the case may be, previous intimation shall be given in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained that such vehicle would not be used for such period and when such an intimation is given, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period . If all these conditions are applied , the registered owner is exempted from payment of tax in respect of such vehicle for such period. Section 5 of the Act also prescribes the procedure that requires to be followed by the registered owner of the vehicle for claiming exemption from payment of

tax under the Act.

6. Then we go to section 6 of the Act, which speaks of refund of tax paid under the Act. The said section is as under:

> *"(1)Where the tax for any motor vehicle has been paid for any quarter or year and the vehicle has not been used or kept for use during the whole of that quarter or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government , shall be payable subject to such conditions as may be specified in such notification.*
> *(2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.*

7. An analysis of the aforesaid section would indicate that if, for any reason, the tax for any motor vehicle has been paid for any quarter or year and if the vehicle has not been used or kept for use during the whole of that quarter or year or a continuous part thereof not being less than one month, the registered owner of the vehicle may claim for refund of tax at such rates as may, from time to time, be

notified by the State Government . Sub-section (2) of Section 6 of the Act states that the registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.

8. In the instant case, it is not the case of the registered owner of the vehicle that he is claiming exemption from payment of tax. In fact, for the quarter ending on 31.03.2002, he had paid tax on 13.03.2002. According to him, he had not used the vehicle for the said quarter. Therefore, he has claimed refund of tax by approaching the authorities under the Act. Being of the view the owner had not claimed exemption by filing Form G which is meant for claiming exemption from payment of tax, the authorities have rejected the claim of the petitioner, which, in our opinion, is impermissible under the law. Section 5, as we have already noticed, speaks of claim for exemption from payment of tax and Section 6 of the Act provides for refund of tax. If a person or a registered owner of a vehicle claims refund of tax, he ought to have requested the authorities under the said provisions of

Section 6 of the Act and the procedure prescribed thereunder. In the instant case, as we have already noticed, the respondents/ appellants herein had rejected the claim of the petitioner/ respondent herein solely on the ground that the petitioner had not filed Form G, which is meant for claiming exemption from payment of tax . This action of the authorities is in violation of the provisions of the Act. The authorities were expected to keep in view the distinction of the two claims, viz., claim for exemption from payment of tax and claim for refund of tax. Exemption from payment of tax is not the same thing as that of claim for refund of tax. In that view of the matter, the procedure followed by the respondents/appellants herein is improper, illegal and irregular and therefore, appropriate orders are require to be made. Accordingly, the following:

O R D E R

i) Writ Appeal is disposed of. The order impugned in this Writ Appeal is set aside.

ii) The matter is remitted back to the appellants to re-consider the application filed by the registered owner of the vehicle by applying the provisions of Section 6 of the Act and the rules

framed thereunder and also keeping in view the several notifications issued by the State Government from time to time. This exercise, the appellants, shall do within six months from the date of receipt of a copy of this judgment. While doing so, the appellants shall not be influenced by any of the observations made by the learned single Judge. I.A. 305 of 2007 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK